

ORIGINAL

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GARY PIERCE - Chairman
BOB STUMP
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PAUL NEWMAN
BRENDA BURNS

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

DOCKET CONTROL

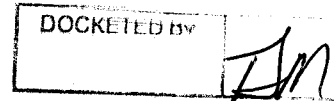
2012 Arizona Corporation Commission
DOCKETED

SEP 27 2012

DATE: SEPTEMBER 27, 2012

DOCKET NO.: W-01732A-05-0532

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

WILLOW VALLEY WATER COMPANY
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NOS. 68610, 71174, 71861 AND 72295)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 9, 2012

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 16, 2012 and OCTOBER 17, 2012

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 WILLOW VALLEY WATER COMPANY, INC.
10 FOR AN EXTENSION OF ITS CERTIFICATE
11 OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01732A-05-0532

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NOS. 68610, 71174,
71861 AND 72295

11 Open Meeting
12 October 16 and 17, 2012
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On March 23, 2006, the Arizona Corporation Commission ("Commission") issued
20 Decision No. 68610 which approved the application of Willow Valley Water Company, Inc.
21 ("Company" or "Applicant") for an extension of its Certificate of Convenience and Necessity
22 ("Certificate") to provide public water utility service to 48 acres of land consisting of Parcels A, B
23 and C in Mohave County, Arizona.

24 2. As a condition of the Commission's approval, the Company was required to file, by
25 March 23, 2007, copies of the developer's Letter(s) of Adequate Water Supply ("LAWS") which is to
26 be issued by the Arizona Department of Water Resources ("ADWR") for each parcel.

27 3. On March 21, 2007, the Company filed a Motion for Extension of Time ("Motion") to
28 file copies of the developer's LAWS stating that it needed an additional twelve months, until March

1 23, 2008, to secure and file copies of the LAWS to be issued by ADWR. The developer was
2 encountering delays due to litigation which involved the Mohave Valley Irrigation and Drainage
3 District ("MVIDD") and a 2005 recall election in Mohave County ("County") that involved its board
4 of directors.

5 4. On April 4, 2007, the Commission's Utilities Division ("Staff") filed a Memorandum
6 which stated that Staff did not object to the Company's Motion and recommended that the requested
7 extension be approved.

8 5. On April 19, 2007, by Procedural Order, an extension of time was granted for the
9 Company to file copies of the developer's LAWS by March 23, 2008.

10 6. On March 21, 2008, the Company requested an additional one year extension of time,
11 until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C to be issued by
12 ADWR. The Applicant in the proceeding had secured and filed copies of the developer's LAWS for
13 Parcels A and B in the extension area.

14 7. In its March 2008 filing, the Company stated that the developer was proceeding with
15 the development of Parcel C and had experienced some delays with the Mohave County Planning and
16 Zoning Department ("MCPZD"). At that time, the developer expected to resolve those issues with
17 the MCPZD after which the developer would secure a LAWS for Parcel C and provide it to the
18 Company to file with the Commission if an extension was granted.

19 8. On April 16, 2008, Staff filed a Memorandum which recommended approval of the
20 Company's request for an extension of time, until March 23, 2009, in order to file a copy of the
21 developer's LAWS for Parcel C.

22 9. On April 29, 2008, by Procedural Order, the Company was granted an extension of
23 time, until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C.

24 10. On March 23, 2009, the developer of Parcels A, B and C, McKellips Land
25 Corporation ("MLC"), filed an Application to Intervene ("Application") in this docket. MLC
26 described what had happened since the granting of the extension of the Company's Certificate on
27 March 23, 2006, and requested intervention pursuant A.A.C. R14-3-105(A) because it alleged that it
28

1 was directly and substantially affected by the Commission's proceedings.

2 11. MLC, in its Application, further indicated that the Company did not oppose its
3 Application. Additionally, together with its Application, MLC filed a Conditional Motion for
4 Extension of Time ("Conditional Motion"), until March 23, 2010, in which to secure a LAWS for
5 Parcel C and provide it to the Company for filing in compliance with the Commission's Decision No.
6 68610.

7 12. On April 7, 2009, by Procedural Order, Staff and the Company were each ordered to
8 file a response to MLC's Application and to its Conditional Motion.

9 13. On April 30, 2009, the Company filed its response to MLC's Conditional Motion and
10 indicated that the Company did not oppose MLC's request for an extension of time on behalf of the
11 Company.

12 14. On May 8, 2009, Staff filed its response to MLC's Conditional Motion. Staff stated
13 that "the downturn in the economy has put a damper on much of the development in the state," but
14 recognized that MLC and the Company "have made significant progress in the extension area" with
15 the LAWS for Parcel C remaining as the last required compliance item from Decision No. 68610, and
16 recommended approval of MLC's Conditional Motion.

17 15. Staff further recommended that no further extension of time be granted.

18 16. Neither Staff nor the Company objected to MLC's Application and therefore MLC
19 was granted intervention for the limited purpose of explaining why additional time for compliance
20 was necessary. The Commission found that the request for an extension of time was reasonable and
21 issued Decision No. 71174 (June 30, 2009) which authorized the Company to file a copy of the
22 LAWS for Parcel C as recommended by Staff by March 23, 2010; however, the Commission placed
23 the Company on notice that any further requests for an extension of time to comply would have to
24 demonstrate that extraordinary circumstances existed that would warrant an additional extension.

25 17. On March 23, 2010, MLC filed another Motion in this proceeding requesting an
26 additional year, until March 23, 2011, for the company to file a copy of the LAWS which would be
27 issued by ADWR to the developer for Parcel C. Further, MLC indicated in its Motion that the
28

1 Company did not object to MLC's request and concurred in the Motion.

2 18. MLC, in its Motion, described the difficulties it had encountered in securing the
3 LAWS for Parcel C. The Motion described the ongoing political and litigation problems which have
4 been affecting the MVIDD and its board. MLC also claimed to have encountered further
5 complications with various Mohave County administrative departments and, as a result, MLC was
6 required to commence the subdivision process all over again "under a new ordinance." MLC
7 asserted that the preliminary plat for Parcel C was submitted and resubmitted multiple times in order
8 to meet new county requirements and additional delays were caused by the parent company of the
9 title company involved in the subdivision process going into reorganization. According to MLC,
10 these events further delayed the issuance of a deed that would enable MLC to file a parcel plat that
11 defined a retention basin which receives storm drainage from all three parcels in the extension area
12 approved in Decision No. 68610.

13 19. According to MLC's Motion, the developer believed that the plat issues had been
14 resolved and the subdivision process could resume. MLC stated that it "has arranged the financing to
15 complete the subdivision and has performed rough grading." MLC indicated that the preliminary plat
16 was complete and the final plat and drafts of the improvement plans had also been completed.

17 20. MLC's Motion also stated that the Company had adequate water to serve Parcel C and
18 that the Company was the "only feasible service provider" within the expansion area and that it was
19 already providing water service to homes within Parcels A and B.

20 21. MLC further stated that it "has diligently pursued the LAWS" to be issued by ADWR
21 and that delays in the process were caused by others and not the fault of MLC or the Company.

22 22. On June 9, 2010, Staff filed its response which indicated that Staff had no objections to
23 the most recent request by MLC for an extension of time for the Company to have until March 23,
24 2011, to file a copy of the developer's LAWS for Parcel C. Staff stated that it recognized MLC was
25 moving forward with the development of Parcel C and the only remaining compliance item from
26 Decision No. 68610 was for the Company to file a copy of the LAWS for the subject parcel. Therefore,
27 Staff did not oppose the Motion, but recommended that no further extensions be granted.

28 23. On September 1, 2010, the Commission issued Decision No. 71861, which authorized a

1 further extension of time until March 23, 2011, for the Company to file a copy of the developer's
2 LAWS for Parcel C, and stated "that no further extension of time to file the aforementioned
3 document shall be granted absent extraordinary circumstances."

4 24. On March 1, 2011, MLC filed yet another Motion in this proceeding and requested a
5 further extension of time until March 23, 2012, to file a copy of the developer's LAWS for Parcel C.¹

6 25. In MLC's Motion, MLC described in great detail what it believed were "extraordinary
7 circumstances," which had prompted MLC to seek an additional extension of time from the
8 Commission to enable the Company to file the required compliance documentation that ultimately
9 would authorize the Company to be the certificated water service provider to Parcel C.² Based on
10 MLC's detailed description of the circumstances, it appeared that MLC was nearing the "finish line"
11 of a long and difficult race in order to proceed with the development of Parcel C.

12 26. On March 16, 2011, the Company filed a response and indicated that it had no
13 objections to MLC's Motion.

14 27. On April 8, 2011, Staff filed a memorandum which recognized the economic downturn
15 that had contributed to the delay in development of Parcel C, but also recognized MLC's ongoing
16 efforts and financial expenditures which had been made in order to proceed with the development of
17 Parcel C. Based on these factors, Staff had no objections to MLC's then current Motion and did not
18 oppose an extension of time until March 23, 2012, for the Company to file a copy of the developer's
19 LAWS for Parcel C. Staff also recommended that no further extensions be granted.

20 28. On May 4, 2011, the Commission issued Decision No. 72295, which recognized MLC's
21 ongoing development efforts for Parcel C, and authorized an extension of time until March 23, 2012,

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23 ¹ In MLC's March 2011 Motion, MLC stated Parcel C had been renamed Willow Valley Estates 21, but would continue
to refer to it as Parcel C for continuity and convenience.

24 ² MLC described having to reapply and obtain an allocation of water from the MVIDD for Parcel C. MLC also
25 described the delays and difficulties it had experienced in its dealings with the MCPZD as a result of which parcel C had
to be put through the subdivision process repeatedly with Parcel C's preliminary plat being submitted to three other
26 County departments for their approval. MLC further stated that the County's various departments were understaffed and
overworked due to the economic downturn resulting in extensive delays during the review process. MLC also stated that
27 it had encountered similar delays with its own engineering company. MLC believed that all plat revisions had been
completed to the County's satisfaction, and barring unforeseen circumstances, Parcel C should have been on the agenda
of the County Board of Supervisors for approval of the preliminary plat in June 2011 so that MLC could move quickly to
28 process the final subdivision plat within the timeframe of the requested extension. MLC further pointed out that it had
paid \$26,500 to the MVIDD as a fee for Parcel C's water allocation and that it signed a Water Facilities Extension
Agreement with the Company for Parcel C on December 10, 2010.

1 for the Company to file a copy of the developer's LAWS for Parcel C.

2 29. On March 15, 2012, MLC again filed another Motion in this proceeding and requested
3 a further extension of time until March 23, 2013, to file a copy of the developer's LAWS for Parcel
4 C. MLC, in its most recent Motion, again recites the plethora of "major hurdles" which it has had to
5 overcome to reach the point where it now is on the verge of going forward with its Parcel C
6 subdivision. MCL states further that, "without question the Parcel C subdivision will eventually be
7 completed," and points out that it has been involved in developing this area since 1959 completing
8 every subdivision it has ever started. Additionally, MLC states "that there is no other (water) utility
9 capable of serving the area."

10 30. On August 17, 2012, the Company filed joinder in MLC's latest Motion stating that
11 the Company believes "MLC has expended significant resources and efforts in reliance on the CC&N
12 for Parcel C", and believes that one final extension of time would be appropriate for MLC to secure
13 the LAWS for Parcel C suggesting the extension run until September 30, 2013. The company further
14 states that its "...joinder shall serve as Notice under the Main Extension Agreement (Agreement)
15 between Willow Valley and MLC for Parcel C, that Willow Valley hereby terminates the Agreement
16 in accordance with Section 11 of the Agreement for failure to complete the project with reasonable
17 diligence, unless the LAWS is submitted on or before September 30, 2013. This Notice should
18 ensure that no further extensions are requested by MLC."

19 31. On August 31, 2012, Staff filed a memorandum which states that it does not oppose a
20 final extension until September 30, 2013, in order for the Company to file a copy of MLC's LAWS
21 for Parcel C. Staff further recommends that no further extensions be granted.

22 32. Under the circumstances, we find that an extension of time until September 30, 2013,
23 should be granted as recommended by Staff. However, no further extension of Decision No. 68610
24 should be granted absent extraordinary circumstances.

25 **CONCLUSIONS OF LAW**

26 1. The Company is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 2. The Commission has jurisdiction over the Company and the subject matter of the
2 extension request addressed herein.

3 3. MLC has previously been granted intervenor status pursuant to A.A.C. R14-3-105 for
4 the purpose of filing for an extension of time on behalf of the Company.

5 4. The Motion requesting an extension of time for the Company to file a copy of the
6 required documentation without objection by Staff as set forth in Findings of Fact No. 31 should be
7 approved, but absent extraordinary circumstances, no further extensions should be granted.

8 **ORDER**

9 IT IS THEREFORE ORDERED that Willow Valley Water Company, Inc. shall be granted an
10 extension of time, until September 30, 2013, to file a copy of the developer's Letter of Assured Water
11 Supply for Parcel C to be issued by Arizona Department of Water Resources as previously ordered in
12 Decision Nos. 68610, 71174, 71861, and 72295.

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1 IT IS FURTHER ORDERED that no further extension of time to file the aforementioned
2 document shall be granted absent extraordinary circumstances.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN _____ COMMISSIONER _____

8
9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

10 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
11 Executive Director of the Arizona Corporation Commission,
12 have hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this _____ day of _____, 2012.

15 _____
16 ERNEST G. JOHNSON
17 EXECUTIVE DIRECTOR

18 DISSENT _____

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20 DISSENT _____

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1 SERVICE LIST FOR: WILLOW VALLEY WATER COMPANY

2 DOCKET NO.: W-01732A-05-0532

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